IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

AS.No. 964 of 1996()

OS.395/1993 of PRINCIPAL SUB COURT,KOLLAM
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APPELLANT - PLAINTIFF - APPELLANT:

M.A. MUHAMMED YUSUF, MANAJADIYIL VEEDU, VARAVILA (P.O.) KARUNAGAPPALLY.

BY ADV. SRI.R.ANIL KUMAR

RESPONDENTS - DEFENDANTS - RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE EXECUTIVE ENGINEER, P.W.D. LOCAL WORK DIVISION, KOLLAM - 13.**

3. **THE ASSISTANT EXECUTI VE ENGINEER, P.W.D. LOCAL WORK SUB DIVISION, KOTTARAKKARA.**

4. **THE ASSISTANT ENGINEER, P.W.D. LOCAL WORKS SECTION, KOTTARAKKARA.**

BY GOVERNMENT PLEADER SHRI L.G. SURESH BABU

THIS APPEAL SUITS HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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A.S. NO. 964 OF 1996

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Dated this the 17th day of September, 2007

J U D G M E N T

Plaintiff in O.S. No. 395 of 1993 on the file of the Prl. Sub Court, Kollam, is the appellant. Appeal is filed against the decree and judgment passed by the trial court dismissing the suit filed by the plaintiff claiming an amount of Rs.45,913/- as amount due to him for the work done and also for the rectification work.

2. Plaintiff was a contractor. Plaintiff submitted the lowest tender for the works notified by the defendants and he was awarded the construction and repair works of Mylom Thalavoor road. An agreement was entered into between the plaintiff and defendants on 19.3.1992. As per the terms of the agreement, plaintiff ought to have completed the work on or before 31.5.1992. He did not finish the work within the stipulated time and the period was extended. The plaintiff contended that site was not handed over to him. The evidence on record shows that the site was handed over on

the date of agreement itself. The plaintiff did not start the work. Exhibits B3 and B4 shows that even on 241.4.1992 plaintiff did not start the work. According to the plaintiff he was unable to do the work because of heavy flood and also due to the delay on the part of the Department to supply materials. Trial court, after considering the evidence on record, dismissed the suit. Challenging that decree and judgment, this appeal is filed. The appeal was filed on 8.7.1996 with a petition to condone delay in filing the appeal. The delay was condoned and appeal is heard under Order XLI Rule 11 of the Code of Civil Procedure.

3. According to the appellant actual measurements were not taken and the measurements recorded in "M" Book, marked as Exhibit B2, are not correct. But the trial court had found that in page 70 of Exhibit B2 the appellant himself had endorsed that the measurements recorded in the "M" Book are correct and he has no objection regarding the same. Since the plaintiff had accepted the measurements, now he cannot be allowed to turn round and argue that the measurements are not correct. No contention was raised by the plaintiff that

he was not given any amount for the work done. According to the plaintiff amount is due for the rectification work done by him. But the stand taken by the defendants was that it is not an additional work but a rectification work by which the appellant rectified certain defects in the works already done. Exhibit A2 letter sent by the third defendant to the plaintiff shows that the plaintiff had undertaken to rectify any mistake which may occur within six months from the date of construction of the road. After analysing the evidence on record, trial court found that the amount claimed by the plaintiff is for the rectification work which he had undertaken to do. Plaintiff has claimed a sum of Rs.35,913/- being the amount withheld by the defendants. Trial court relying on Exhibits B2 and B10 found that work was not done as per the estimate and there was shortage. Considering all aspects of the matter, trial court found that plaintiff was not entitled to get any relief.

4. I do not find any reason to admit the appeal and keep the same pending after a lapse of 11 years. There is no merit in the appeal and the same is only to be dismissed under

Order XLI Rule 11 of the Code of Civil Procedure.

In the result, appeal is dismissed accordingly.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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A.S. NO. 964 OF 1996

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J U D G M E N T

17TH SEPTEMBER, 2007